

ST 01-0167-GIL 08/20/2001 CONSTRUCTION CONTRACTORS

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

August 20, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 13, 2001 to Director Glen Bower. Director Bower asked that I respond directly to you about your letter. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The VILLAGE received a request of the sales tax number for a construction project for our Municipality.

Should there be any concerns or precautions on our part when we release our number to the contractors enabling them to purchase material without paying sales tax? Our concern is contractor's using this number for material not related to the VILLAGE project.

Thank you for your attention to this matter.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See also 86 Ill. Adm. Code 130.1940, enclosed.

Construction contractors should pay tax to their Illinois registered suppliers on building materials they will incorporate into real estate. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to this Department.

However, contractors who physically incorporate tangible personal property into real estate owned by exempt organizations, such as governments, that hold tax exempt "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

This regulation explains how after the government body has provided their "E" number the contractor must provide their suppliers with the exemption identification number of the governmental body that owns the property. In addition, they must provide their suppliers with certifications explaining they are making improvements to realty owned by the governmental body by name and address of the realty being improved, and including the date the contract was executed.

Please be advised that neither the statute nor the regulations require that you as the governmental body must take any special precautions after you have provided your "E" number to the contractors. However, it would not hurt if you were to remind them that the number is to be only used for purchases of tangible personal property that will be physically incorporated into real estate. Section 130.2075(d)(4) states that:

"A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his **purchases are for conversion into real estate** under a contract with a church, charity, school or **governmental body**, identifying the church, charity, school or **governmental body** that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting. (emphasis added)"

Please be advised that the words "purchases are for conversion into real estate" mean purchases of tangible personal property by a construction contractor who will affix such property to a building structure so that it is permanently incorporated into that structure as an integral part thereof. Normal examples of qualifying building materials are lumber, steel beams, bricks and roof shingles. Other items that can be permanently installed into a building structure include windows, insulation, doors, plumbing systems, water heaters, pipes, sinks and faucets. The contractor's purchase of items that will not be so incorporated into realty and that are for his own use, such as ladders, power drills, molds, hammers, etc., would be subject to sales tax. See Section 130.1940.

The contractor also faces the prospect of being audited by the Illinois Department of Revenue. Further, any person who violates any rule or regulation of the Department for the administration of the Retailers' Occupation Tax Act is committing a Class A misdemeanor, and misuse of an "E" number is such a violation, 35 ILCS 120/13.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us.

Very truly yours,

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Associate Counsel

KWB:msk
Enc.